

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

VICTOR L. SCHWARTZ, et al.,

Plaintiffs,

vs.

No. CIV 98-1111 BB/LCS

CITY OF SANTA FE, et al.,

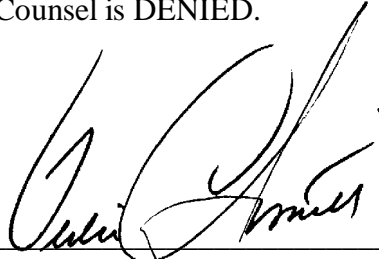
Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiffs' Motion for Determination of Knowledgeable Waiver of Independent Counsel, filed on October 16, 1998. The Court, having considered the submissions by the parties and the applicable law, finds that the Motion is not well-taken and it will be denied.

Plaintiffs contend that Defendants' counsel may have a conflict of interest because they represent the governmental entity as well as the individual defendants in both their official and their individual capacities. While Plaintiffs' concern about the quality of their opponent's representation is admirable, they do not have sufficient stake in that controversy to raise this issue. *See generally Flast v Cohen*, 392 U.S. 83, 99-100 (1968). If Defendants claim that they were prejudiced because of their attorney's representation of competing interests, their remedy would lie in a malpractice action against the attorney, not an "automatic appeal" of a judgment in favor of Plaintiffs.

NOW THEREFORE, IT IS ORDERED that Plaintiffs' Motion for Determination of Intelligent Waiver of Independent Counsel is DENIED.

A handwritten signature in black ink, appearing to read 'Leslie C. Smith', is written over a horizontal line.

Leslie C. Smith
UNITED STATES MAGISTRATE JUDGE
(505) 527-6914